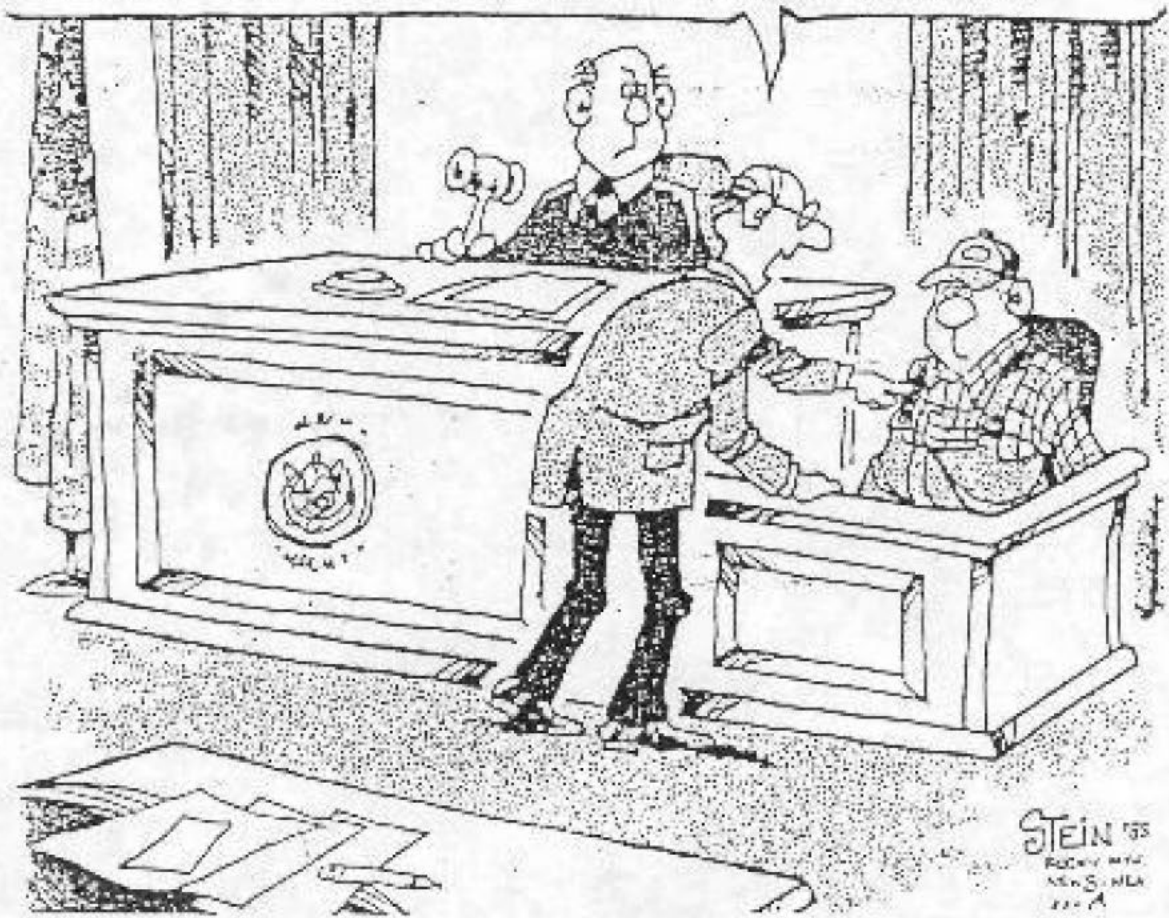


# IDENTIFYING & RESOLVING DISPUTES BEFORE THE COURT



OFFICE OF THE CHIEF IMMIGRATION JUDGE  
ACIJ JACK H. WEIL  
OCTOBER 16, 2018

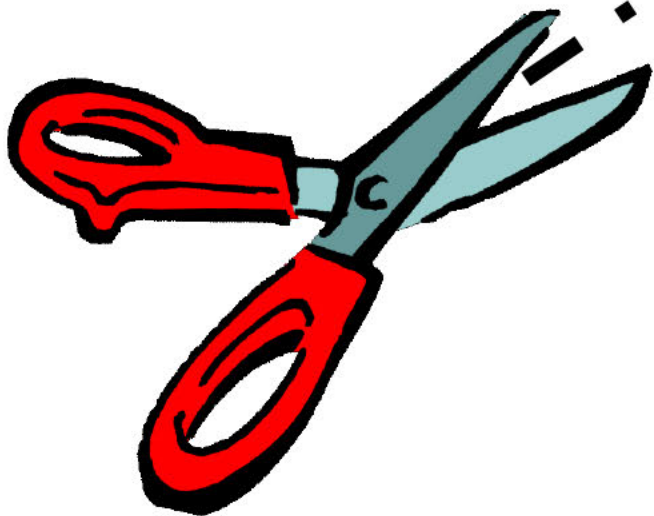
SO YOU ADMIT IT: **YOU** PLANTED THE CORN USED BY THE DISTILLERY TO MAKE THE WHISKEY SOLD TO THE BAR THAT SERVED MY CLIENT, CAUSING HIM TO HAVE AN ACCIDENT WHILE DRIVING HOME DRUNK!



**Identifying  
issues for  
resolution**

**Removability**

**Relief**



In removal proceedings under section 240 of the Immigration and Nationality Act

(b) (6)

In the Matter of:

Respondent: (b) (6)

IN I&NS CUSTODY

currently residing at:

(Number, street, city state and ZIP code)

DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW

- ☐ 1. You are an arriving alien.  
☒ 2. You are an alien present in the United States who has not been admitted or paroled.  
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

JAN 27 2003

FILED WITH

SAN DIEGO, CA

The Service alleges that you:

- 1) You are not a citizen or national of the United States;
- 2) You are a native of CHINA, PEOPLES REPUBLIC OF and a citizen of CHINA, PEOPLES REPUBLIC OF;
- 3) You arrived in the United States at or near Tecate, California, on or about January 22, 2003;
- 4) You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

.212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.  
☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: \_\_\_\_\_  
a place to be set

on a date to be set \_\_\_\_\_ at a time to be set \_\_\_\_\_ to show why you should not be removed from the United States based on the  
(Date) (Time)  
charge(s) set forth above.

(b) (7)(C)

Date: January 22, 2003

San Diego, California

(City and State)

See reverse for important information



**It's black or white.**

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(b) (6)

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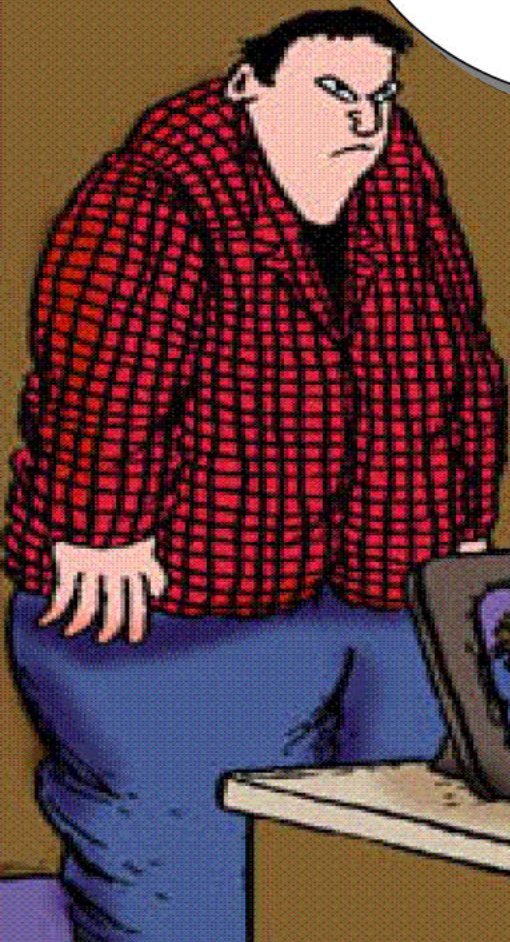
See reverse for important information

**Factual disputes are  
resolved by a judge's  
“findings of fact.”**



**Disputes of law are  
resolved by a judge's  
“conclusions of law.”**

Clearly erroneous?



So, you want relief, eh? I'd love to grant you relief! But it's up to the Ouija board, not me! Should respondent be granted relief?... Hey! It's moving! It's moving! ...and it says NO!

## Conclusions of Law: *De Novo* Review



# Sample Removal Issues

- Aggravated felony
  - Drug trafficking
  - Sexual abuse of a child
  - Crime of violence, Murder, Rape
  - Theft offense with 1 year or more sentence
  - Burglary with 1 year or more sentence
- Controlled substances
- Crimes involving moral turpitude
- Firearms
- Present without inspection
- Alien smuggling
- Inadmissible at time of admission
- Fraud
- Overstay
- National security
- Health related grounds



# *The Issue*



# Issues of Law & Fact

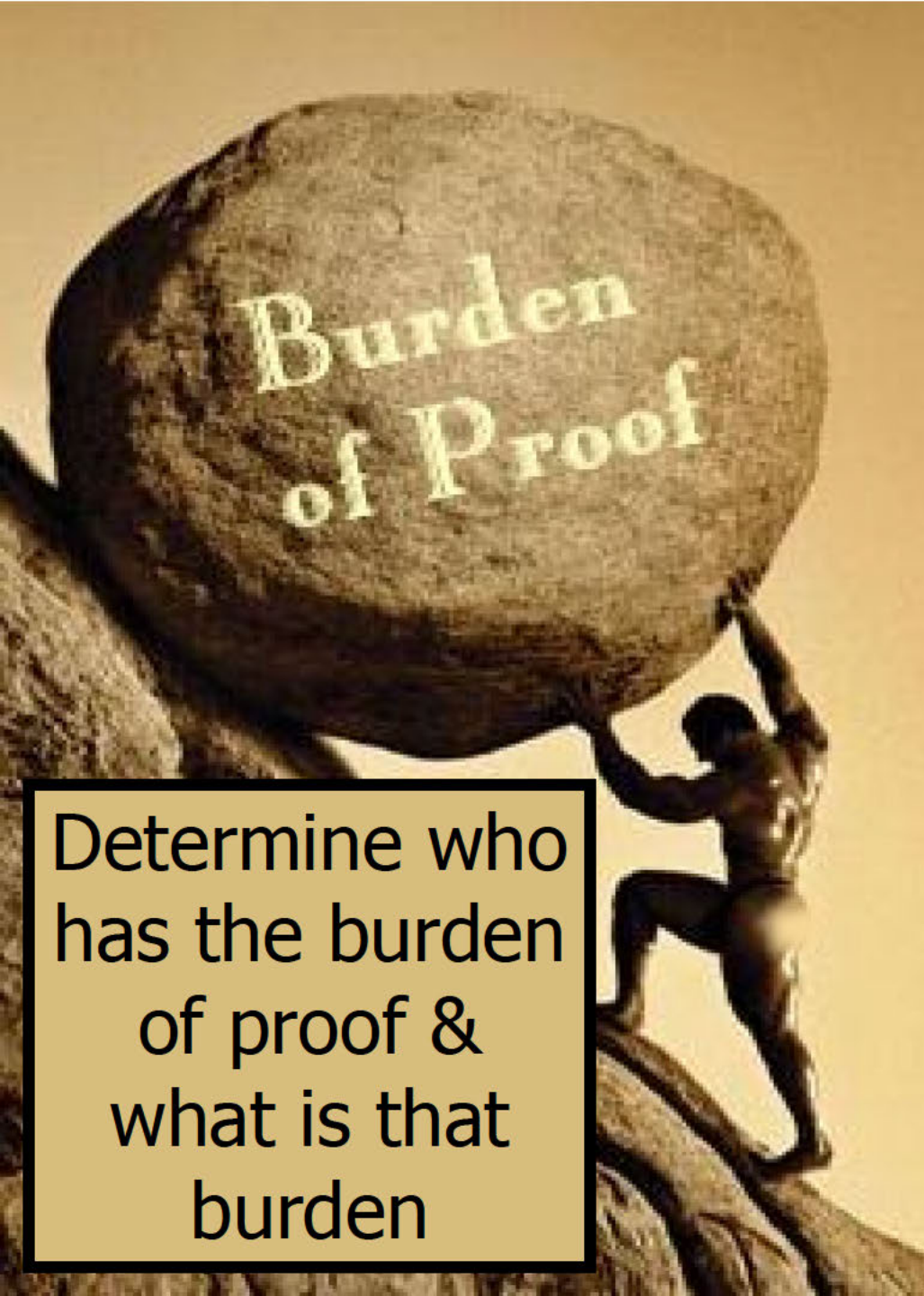
## Issue of Fact

Whether the respondent arrived in the United States on January 22, 2003?

## Issue of Law

Whether the respondent was “inspected” when immigration officers waved in the car in which he entered the United States without speaking to the occupants or requesting documents?





Determine who  
has the burden  
of proof &  
what is that  
burden

Preponderance of  
the evidence

Clear & convincing

Clear probability

More likely than not

Beyond a doubt

# Arriving Aliens



## **Section 101. Definitions**

**(a) As used in this Act—**

**(13)**

**(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.**

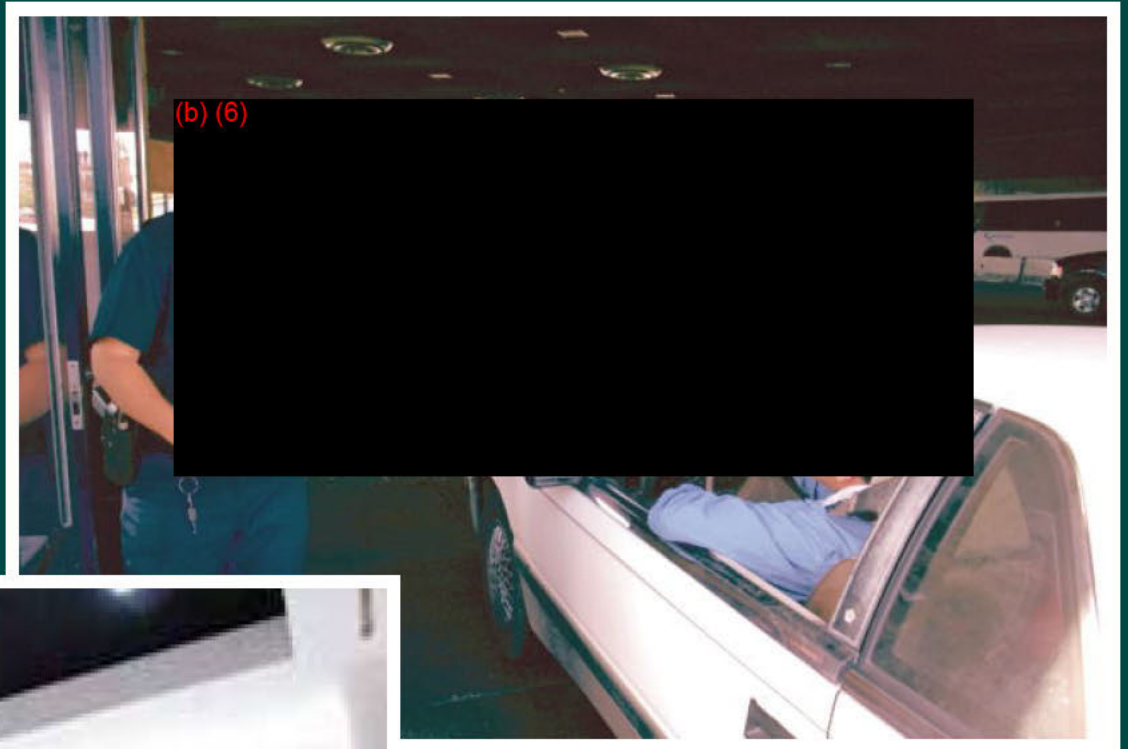


# Aliens Present without Admission or Parole





# Admitted Aliens



In removal proceedings under section 240 of the Immigration and Nationality Act

(b) (6)

In the Matter of:

Respondent: (b) (6)

currently residing at:

IN I&NS CUSTODY

(Number, street, city state and ZIP code)

DEPARTMENT OF JUSTICE  
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IMMIGRATION REVIEW

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(b) (7)(C)

Date: January 22, 2003

San Diego, California

(City and State)

See reverse for important information

# Three Classes of Aliens

<b>Class of Alien</b>	<b>Burden of Proof</b>	<b>Standard of Proof</b>
Arriving Alien	Alien	Beyond a doubt
Present without Inspection	Alien	Clear & convincing
Admitted Alien	DHS	Clear & convincing

# Relief in Lieu of Removal

- Requirements for relief
  - ✧ Statutory or international convention
  - ✧ Discretionary (usually)
- Duty of judge to identify
- Burden of proof on respondent



# Sample Relief Issues

- Asylum
- Withholding of Removal
- Convention Against Torture
- Cancellation of Removal for Lawful Permanent Residents
- Cancellation of Removal for Non-Lawful Permanent Residents
- Special Immigration Juvenile Status
- Adjustment of Status
- T, U, or V Visas
- VAWA Protections
- Registry
- NACARA
- Temporary Protected Status
- Refugee waiver
- Adjustment of Status
- Waivers of Inadmissibility
- Voluntary Departure



~~COR/LPR~~

~~COR/NLPR~~

PRE-VR

Legal –

**NO**

~~POST VR~~

1X =

**2018**

~~ASYLUM~~

Hurt -

**NO**

~~WITHHOLDING~~

~~209~~

M(arried) –

**NO**

~~CAT~~

K(ids) –

**NO**

~~212(c)~~

P(arents) –

**NO**

~~212(h)~~

F(iled) –

**NO**

~~ADJUSTMENT~~

\$ -

**NO**

~~REGISTRY~~

~~TPS~~

Victim (T,U,V, SIJ) - **NO**

~~NACARA~~

## **Cancellation or Removal for Non-Permanent Residents:**

- physically present for not less than 10 years preceding application.
- person of good moral character during such period.
- has not been convicted of a listed offense
- establishes exceptional and extremely unusual hardship to a qualifying relative.
- relief warranted as a matter of discretion.

# Discretionary determinations

- Based upon totality of the facts and circumstances
- Do the equities (favorable factors) outweigh the adverse (negative) factors?
- Respondent generally required to show by a preponderance of the evidence that he/she merits a favorable exercise of discretion
- Applies to motions as well



# Examples of factors evidencing public interest & desirability or lack thereof

- Danger to the community
  - ✧ Propensity towards violence
  - ✧ Recidivist behavior (additional violations of laws considering nature, recency, & seriousness)
  - ✧ Genuine rehabilitation (including remorse and acceptance of responsibility)
- Family ties
- Employment history
- Property & business ties
- Hardship to respondent and family
- Value & service to the community (volunteer & military service)
- Length of residence (esp. inception at young age)
- Country conditions
- Paying taxes
- Criminal history
- Immigration history
- Child support
- Other evidence of good or bad character
- Nature & circumstances of grounds of removal



# Burden of proving relief eligibility

- Generally: preponderance of the evidence
- Withholding & CAT: clear probability; more likely than not



# Possible Outcomes of a Removal Proceeding

- Terminate
- Continue
- Administratively close
- Grant relief
- Deny relief
- Order removed



# Sample Motions & Procedural Issues

- Motion to continue
- Motion to withdraw
- Motion to terminate proceedings
- Motion to suppress
- Motion to reopen
- Motion to reconsider
- Motion to administratively close
- Motion to recalendar

